IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/07/2002

Coram

The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRL.R.C. No.412 of 2001

S.P. Shenbagamoorthy .. Petitioner

vs.

1. Mr.Mu.Ka. Stalin

2. The Director,
Directorate of Vigilance and
Anti-Corruption,
Chennai. ..Respondents

Criminal Revision Case against the order dated 19.3.2001 passed in unnumbered C.C.S.R.No.1434 of 2001 on the file of the Principal Sessions Judge, Chennai.

!For Petitioner : Mr. T.K.Sampath for
Mr. I.S. Inbadurai

^For Respondent-1 : Mr. M. Venkataraman for
Mr. K. Senthilkumar

For Respondent-2 : Mr. E. Raja, Addl. P.P.

:O R D E R

Shenbagamoorthy, the petitioner herein filed a complaint against Mr.Mu.Ka. Stalin, the Mayor of Chennai and M.L.A. of Thousand Light Constituency,before the learned Principal Sessions Judge, Chennai alleging that he amassed wealth disproportionate to his known sources of income by constructing a big house at Velacherry and having Snow Bowling Centre at Nungambakkam worth about several crores and prayed for sending the said complaint to the Director of Vigilance and AntiCorruption for investigation under Section 156(3) Cr.P.C.

2. Entertaining the same, the Principal Sessions Judge directed the Directorate of Vigilance and Anti-Corruption to make a preliminary enquiry over the said complaint through an Officer not below the rank of Superintendent of Police and file the report before the said Court.

3. Accordingly, preliminary enquiry was conducted and final report was filed by the police stating that no prima facie case is made out against Mr. Stalin, the respondent.

4. Assailing the said report, the petitioner filed a protest petition requesting further investigation. Rejecting the said protest petition, the Principal Sessions Judge dismissed the complaint by accepting the preliminary enquiry report submitted by the Director of Vigilance and Anti-Corruption.

5. This order is put under challenge before this Court in this revision.

6. According to the counsel for the petitioner Mr.T.K.Sampath, the entire procedure followed by the Principal Sessions Judge in ordering enquiry on the basis of the affidavit of the respondent Mr. Stalin and in accepting the enquiry report even though it was pointed out by the petitioner that the report submitted by the police was biased as they were under the control of Mr. M.Karunanidhi, the then Chief Minister, the father of Mr. Stalin.

7. Mr.M.Venkataraman, the learned counsel appearing for the respondent Mr. Stalin in justification of the reasonings given in the order impugned for accepting the enquiry report and rejecting the complaint, would contend that the procedure followed by the Court below was correct and as there were no prima facie materials against the respondent Mr. Stalin to attract the offences under the Prevention of Corruption Act, the order impugned may not be interfered with. He would also point out that the order passed by the Court below directing enquiry was earlier questioned with regard to the procedure adopted by the Sessions Court in the revision before this Court and the same was dismissed by this Court in Crl.R.C.No.219 of 2001 and as such, the mode of procedure adopted by the Principal Sessions Judge cannot again be questioned in this revision.

8. I heard the learned Additional Public Prosecutor also. The counsel for the parties and the learned Additional Public Prosecutor would cite number of authorities.

9. Before dealing with the propriety and legality of the order impugned rejecting the complaint filed by the petitioner, it would be better to mention the chronological facts which led to the passing of the impugned order:

"(a) Shenmugamoorthy, the petitioner herein claiming himself as a social worker in the name of Annai Narpani Mandram, filed a complaint before the Principal Sessions Judge, Chennai on 8.2.2001 alleging that Mr. M.K. Stalin, the Mayor of Chennai and an M.L.A. amassed wealth disproportionate to his known sources of income and as such, a direction has to be issued under Section 156(3) Cr.P.C. for the investigation to be done by the Directorate of Vigilance and Anti-Corruption. The complainant and his counsel were present on that day. The Principal Sessions Judge directed the Office to call the matter on 12.2.200 1. On 12.2.2001, the matter was called. The arguments of the counsel for the complainant were heard. After hearing the counsel, the matter was posted for orders on 16.2.2001.

(b) Meanwhile, on 14.2.2001, Mr. Stalin appeared before the said Court along with his Advocate Mr.T.V.Kalyanasundaram and filed an affidavit requesting the Court to order for such an enquiry so that he can prove his purity and innocence and also to expose the evil design of the complainant in filing the said false complaint. This was entertained by the said Court. The Court recorded the presence of the deponent and directed the Office to file the affidavit with the connected records and call it on 16.2.2001.

(c) On 16.2.2001, the Principal Sessions Judge passed an order directing the Directorate of Vigilance and Anti-Corruption to appoint an Officer not below the rank of Superintendent of Police to make a preliminary enquiry regarding the allegation in the complaint and file a report before the said Court on 8.3.2001.

(d) Challenging this order for having entertained the affidavit of Mr. Stalin against whom the investigation was sought for and for fixing the short time limit for filing the final report before the said Court, Shenbagamoorthhy, the petitioner filed Crl.R.C.No.219 of 2001 before this Court. However, the same was dismissed by this Court by the order dated 27.2.2001 on the ground that there is nothing wrong in fixing the time limit for filing the report and furthermore, revision would not lie against the order of enquiry which is interlocutory in nature.

(e) On the same day, i.e. on 27.2.2001, the petitioner sent a letter to the Directorate of Vigilance Anti-Corruption Department requesting to summon him for recording his statement to furnish further materials with reference to the accusation. On 3.3.2001, he was summoned by the Directorate of Vigilance and Anti-Corruption Department. On the same date, he appeared before the Superintendent of Police, Vigilance and sought for two days time for filing his written statement. Accordingly, time was granted upto 5.3.2001. He filed a detailed statement before the Superintendent of Police, Vigilance mentioning the names of benamis of Mr. Stalin who possess the properties on behalf of Mr. Stalin.

(f) After finishing the preliminary enquiry, on 8.3.2001, the Director of Vigilance and Anti-Corruption filed a preliminary enquiry report before the said Court giving the particulars of investigation and intimating that the materials collected during the enquiry do not reveal any prima facie case as against Mr. Stalin. After entertaining the same, the Principal Sessions Judge adjourned the matter for hearing the complainant, the petitioner.

(g) On 12.3.2001, the copy of the enquiry report was furnished to the petitioner. The counsel for the petitioner and the Special Public Prosecutor appearing for the Vigilance Department also were heard. The petitioner was questioned by the Court putting him into box to find out whether he has any further evidence. The counsel for the complainant wanted time to file protest petition. Therefore, the matter was adjourned to 14.3.2001.

(h) On 14.3.2001, the protest petition was filed. Through the protest petition, the petitioner wanted for an impartial further enquiry by any other officer other than the present Police officer. The Special Public Prosecutor

appearing for the Vigilance and Anti-Corruption requested time for filing reply. So, the matter was adjourned to 16.3.2001.

(i) On 16.3.2001, reply by the Special Public Prosecutor on behalf of the Vigilance and Anti-Corruption was filed. The counsel for the complainant as well as the Special Public Prosecutor were heard.

(j) On the basis of these report and petitions filed by the parties, the Court below passed a detailed order dated 19.3.2001 accepting the preliminary enquiry report filed by the Director of Vigilance and Anti-Corruption and rejecting the complaint."

10. The sheet anchor in the submission made by the counsel for the petitioner is that the investigation conducted by the Director of Vigilance and Anti-Corruption which was under the control of the former Chief Minister Mr.Karunanidhi, the father of Mr. Stalin is biased and that therefore, the said preliminary enquiry report should have been rejected and further investigation should have been ordered as prayed for through his protest petition.

11. Straightaway, I shall state that I am not impressed by this submission, since it is the petitioner who wanted the investigation against Mr. Stalin through the Directorate of Vigilance and AntiCorruption of the State. In the complaint filed on 8.2.2001, he made the prayer in the last paragraph, which is as follows:
"The complainant therefore prays that this Hon'ble Court may be pleased to refer the complaint under Section 156(3) of Cr.P.C. to the Director of Vigilance and Anti-corruption for investigation and to file its report before this Hon'ble Court and thus render justice."

12. After filing of the preliminary report, the copy of the preliminary enquiry report was directed to be furnished to the complainant/ petitioner on 12.3.2001. Then, he filed detailed protest petition requesting the Court not to accept the said report and seeking for further investigation by some other officer. The prayer in the protest petition filed on 14.3.2001 is as follows:
"I therefore pray that this Hon'ble Court may be pleased to order for further investigation directing an impartial enquiry by any other officer other than the present officer and his team and thus render justice."

13. As noted above, before filing the preliminary enquiry report, the petitioner filed a revision before this Court against the order directing for preliminary enquiry by the Directorate of Vigilance and Anti-Corruption by fixing a time limit in Crl.R.C.No.219 of 2001. In that revision, he did not question the investigation by the Director of Vigilance and Anti-Corruption and he had questioned the time limit alone. This Court while passing the order dated 27.2.2001 dismissed the petition holding that the order directing for enquiry fixing the time limit is not illegal. The relevant observation is as follows:
"I am at a loss to understand as to how the petitioner is prejudiced by the order of the learned Sessions Judge since all that the petitioner wanted is only an investigation in the Crime, which the learned Sessions judge has

obliged by forwarding the complaint under Section 1 56(3) Criminal Procedure Code for enquiry to be conducted by an officer not below the rank of Superintendent of Police. Any person, who filed a complaint, is expected to be interested in the expeditious investigation of the Crime and will not put spokes in the wheels of investigation by asking the court that there should be no time limit for filing the final report. Even assuming for a moment that the time limit given by the Court is not sufficient, it is not for the complainant to come out with a petition stating that the time limit given by the learned Sessions Judge should be deleted. If the investigating officer, conducting enquiry and deciding to register a case, finds that it is not possible for him to file the final report within the time stipulated in the order, he is always at liberty to appear before the Sessions Court, file a petition and seek extension of time which the Court will always consider on its merits. The petitioner cannot take the role of a police officer and then file a petition stating that the time limit given therein must be deleted and the officer must be given unlimited period to keep it pending on his file."

14. It is seen from this, the petitioner wanted that the investigation shall not be completed quickly but it shall go on against Mr. Stalin and the same shall be kept pending unendingly.

15. The observation made by this Court in Crl.R.C.No.219 of 2001 would make it clear that this Court commented about the strange behaviour of the complainant who wanted to put spokes in the wheels of the investigation by asking the Court not to fix any time limit for filing the final report, whereas normally,the complainant would be interested in expeditious investigation of the crime.

16. That apart, the perusal of the complaint filed by the petitioner on 8.2.2001 would indicate that it does not satisfy the requirement of "a complaint" under Section 200 Cr.P.C. as defined under Section 2(d) of Cr.P.C., but it is only a petition under Section 156(3) Cr.P.C. requesting for investigation by the Director of Vigilance. Thus, it is clear that the purpose of the petitioner in approaching the Court is not to file "complaint" requesting the Court to take cognizance of the offence under Section 190(1)(a) Cr.P.C., but he approached the Court to get a direction for investigation under Section 156(3) Cr.P.C.

17. The reading of the said petition dated 8.2.2001 would show that there is a reference about a house at Velacherry and a Company Snow Bowling Centre at Nungambakkam which is worth about several crores. Along with the petition only photographs and negatives were filed showing the building of the house at Velacherry. No other documents were produced. No list of witnesses was appended. So, the perusal of the said petition would merely reveal that the petitioner came to know that the above two properties worth about eight crores of rupees were owned by Mr. Stalin, Mayor and M.L.A. a public servant, and the same were disproportionate to his known sources of income. There is no mention about the other materials in the petition dated 8.3.2001 nor any materials produced along with the petition.

18. Admittedly, the petitioner was not having the materials when the

complaint was filed on 8.2.2001. This was the reason as to why he chose to file the complaint for direction with a view to collect the materials for the alleged accusation through the police.

19. It is to be noticed that when such a petition under Section 156 (3) Cr.P.C. was filed seeking for a direction to the State Vigilance on 8.2.2001 and seeking for further investigation by any other officer in the Directorate other than the present officer who filed the preliminary enquiry report on 12.3.2001, he knew that the entire State Police was under the control of the then Chief Minister Mr.Karunanidhi, the father of Mr. Stalin. When such being the case, it is settled law that the petitioner either may have filed a complaint under Section 200 Cr.P.C. after collecting the materials from his own source and requested the Court to take cognizance or he might have filed the petition before the appropriate forum for the direction to be given to some other investigating agency not controlled by the State.
20. As a matter of fact, after dismissal of the revision in Crl.R.C. No.219 of 2001, the petitioner on the same day sent a letter i.e. on 2 7.2.2001 to the Superintendent of Police stating that he has got documents to show that Mr.Stalin amassed wealth disproportionate to his known sources of income. He had also stated that he would be ready to appear before the Superintendent of Police to produce those materials as and when required. At that time, the investigation was not objected to on the above ground. In pursuance of his letter, the Directorate summoned him on 3.3.2001 to produce the records. He requested time up to 5.3.2001. Accordingly, he was permitted. He filed a detailed written submission on 5.3.2001. However, no documents were filed along with the submission. On the other hand, for the first time, through the letter dated 5.3.2001, he requested the Superintendent of Police that he may be given further three weeks time to move either the Supreme Court or the appropriate forum to appoint an independent agency for unbiased investigation. However, on consideration of the said submission and on the basis of the materials collected by the Vigilance, the Director of Vigilance filed preliminary report on 8.3.2001 saying that there is no prima facie case as against Mr. Stalin.

21. Strangely, in the protest petition filed on 12.3.2001 to the report dated 8.3.2001, the petitioner requested the Court to reject the report of D.V.A.C. and proceed with the case on the basis of the complaint in accordance with law. In this protest petition, though he said that the report is biased, he did not mention that he would move before the appropriate forum seeking for investigation by C.B.I. or other independent agency. Furthermore, the prayer in the protest petition is to reject the report and proceed with the case on the basis of his complaint is quite misleading, in view of the fact that the petition presented before the Court on 8.2.2001 is not a complaint, but it is only a petition seeking for direction under Section 156(3) Cr.P. C. But, blowing hot and cold, the petitioner filed detailed additional protest petition on 14.3.2001 accompanied with the affidavit finding fault with the police by pointing out various loopholes in the report and requesting for further investigation directing for impartial enquiry by any other officer other than the present officer. This means, he wanted further investigation by the very same department, namely State Vigilance through some other officer. This also would make it clear that he wanted the issue relating to

the accusation against Mr. Stalin is kept pending either in the form of a proceeding before the court or in the form of an investigation pending before the Police Department.

22. If the real intention of the petitioner is to collect the truth of allegation, he would have filed petition before the appropriate forum asking for investigation by C.B.I. Though he mentioned about his move in the letter sent to the Superintendent of Police, Vigilance on 27.2.2001, he did not think it fit to do so for the reason best known to him. Admittedly, these petitions and the counter petitions were filed before the court just prior to the election. Therefore, this Court is unable to hold that the petitioner approached the court seeking for a direction under Section 156(3) Cr.P.C. with bona fide purpose.

23. Similarly, the appearance of Mr. Stalin, the respondent herein, before the court below seeking for the investigation in regard to the accusation made against him when the matter was posted for orders, also does not appear to be bona fide.

24. As mentioned above, the petition was presented on 8.2.2001. The counsel for the complainant was heard on 12.2.2001. The docket sheet of the diary would show that the matter was posted for orders on 16.2.2001. Strangely, Mr. Stalin, the respondent herein appeared on 14.2.2001 through an Advocate.

25. According to the petitioner, Mr. Stalin came with his followers in the court and he was allowed by the Court to come to the witness box on 14.2.2001 and his affidavit was entertained on the said date. This statement is correct, in view of the fact that the affidavit of Stalin contains the Court seal dated 14.2.2001 and following endorsement has been made by the Principal Sessions Judge:
"Deponent present and filed his affidavit in open court. File with connected records."

26. The name of the counsel for the respondent is mentioned as P.V. Kalyanasundaram. The court record does not show that any memo or vakalat has been filed on his behalf. But, the fact remains that the affidavit filed by the respondent was entertained and allowed to be filed with connected records, even though the above case was not posted on that date.

27. It is settled law, as held in CHANDRA DEO SINGH v. PROKASH CHANDRA BOSE (1963 MWN (Cr.)114(SC)) and UNION OF INDIA v. W.N.CHADA (19 93 S.C.C.(Cri) 1171), that till the issue of process to the accused, the accused has no say in the matter. On the other hand, the Principal Sessions Judge strangely allowed the accused to make his plea through his oral statement made in witness box and through his affidavit and entertained the same by directing the Office to file along with the connected records and directed to be posted on 16.2.2001 for passing orders.

28. The perusal of the said affidavit shows that Mr. Stalin came to the court on coming to know of the filing of the complaint against him through the newspaper report with a view to request the court to order police

investigation over the allegation so that he would be able to prove his purity and innocence as the first citizen of Chennai City 'a Mayor', who would be the first person in upholding the purity in public life.

29. Admittedly, this affidavit was entertained in the absence of the complainant, even though the matter was not posted on the said date. But, in the order passed on 16.2.2001, the lower Court referred to the affidavit filed by Mr. Stalin on 14.2.2001 requesting for investigation. The order passed on 16.2.2001 would further show that the Court below has taken into consideration the statement made by Mr. Stalin that he would wholeheartedly and voluntarily place himself for investigation if ordered by the said Court or else he would be certainly disappointed, as the same would deny him an opportunity to clear himself from the allegations made against him. The order dated 16.2.200 1 directing for preliminary enquiry would show that the Directorate of Vigilance was directed to conduct preliminary enquiry before registration of the case, in the light of the request made by the respondent for the enquiry since through the said enquiry, he would be given an opportunity to clear himself from the allegations. So, the contents of the affidavit and the order dated 16.2.2001 would clearly indicate that the opportunity was sought by Mr. Stalin to prove himself as a pure man before the ensuing election and the same was granted.

30. Thus, it is clear that the attitude of both the petitioner and the respondent is that they wanted to get some orders from the court in order to achieve their object of getting publicity over the accusation and the result of enquiry on the eve of election.

31. The petitioner made allegation raising corruption charges against the Mayor of the City and wanted an investigation. He is also anxious to see that the investigation should not be completed soon and the same must be pending during the ensuing election. In the same way, Mr.Stalin also had shown anxiety to clear himself from the charges as expeditiously as possible i.e. even before the election, so that he could get certificate as "Mr.Clean" to enable him to use the same in the ensuing election.

32. Thus, both have approached the court for the purpose of achieving their ends which I am not able to hold as bona fide.

33. However, as noticed earlier, the order directing the preliminary enquiry by the Directorate of Vigilance and Anti-Corruption and filing of the report on or before 8.3.2001 has been held to be valid by this Court in Crl.R.C.No.219 of 2001. Therefore, this Court would not go into the legality of the said order again as the same is irrelevant to the issue raised in this revision.

33. In this context, the question that arises for consideration now is, "Whether the order passed by the Sessions Court accepting the preliminary enquiry report and rejecting the petition filed by the petitioner is correct or not?"

34. As indicated above, the prayer in the petition filed on 8.2.2001 is only

for the investigation under Section 156(3) Cr.P.C. The said relief has been granted by the court earlier. In pursuance of the order passed in the petition, the Superintendent of Police, Vigilance conducted preliminary enquiry, examined the petitioner, received the written submission given by the petitioner, collected the materials and finally filed a report on 8.3.2001 giving the details of the investigation and reported to the court that there is no prima facie case against Mr. Stalin.

35. Despite that, the petitioner prayed through the protest petition to make further investigation by some other officer in the same department, even though the entire Department was under the control of the Chief Minister, who is the father of Mr. Stalin.

36. In short, it can be stated that both in the petition presented under Section 156(3) Cr.P.C. on 8.2.2001 and in the protest petitions filed on 12.3.2001 and 14.3.2001, no materials were given excepting reference about the two properties and the names of some persons as benamis.

37. This is nothing but a statement on the basis of the complainant' s impression about Mr. Stalin. The impression or opinion given by the petitioner would not give rise to a cause of action either to take the complaint on file or to give a direction to the police to register the case against the particular person.
38. In short, the reading of the petition dated 8.2.2001, 12.3.2001 and 14.3.2001 filed by the petitioner would not show that he has got any materials to prove the accusation made against Stalin. As a matter of fact, in the letter sent to the Directorate of Vigilance and Anti-Corruption by the petitioner on 27.2.2001, he mentioned that he has got proof and documents to show that Mu.Ka.Stalin has amassed wealth which is disproportionate to his known sources of income. The following is the statement:
@K/f/!;lhypd; tUkhdj;jpw;F mjpfkhf brhj;J nrh;j;jjw;fhd Mjhu';fs; j!;jhnt$^fs; vd;dplk; cs;sd/@
39. Having said so, he must have produced those materials along with the written submission filed by him on 5.3.2001. Admittedly, this had not been done. On the other hand, when he was put in the box on 12 .3.2001 by the Principal Sessions Judge to question him as to find out whether any other material is available with him against Stalin, he said that he had no other material except the photographs of the building. The relevant statement is as follows:
"ePjpkd;wj;jpy; jhf;fy; bra;Js;s g[ifg;glj;ijj; jtpu !;lhypd; kPJ tHf;F nghLtjw;F vdf;F ntW ve;j Mtz';fSk; fpilf;ftpy;iy/"

40. Having made such a statement before the Court on 12.3.2001, it is ununderstandable as to how the petitioner asked for further investigation. The preliminary enquiry report filed by the Vigilance on 8.3 .2001 and the reply statement filed by the Vigilance to the protest petition would refer to so many materials collected by the Vigilance to show that there is no basis for the allegation mentioned in the petition dated 8.2.2001. Under those circumstances, there is no other alternative except to accept the report of the Director of Vigilance and Anti-Corruption whom the petitioner wanted to conduct investigation.

41. It is settled law that when the complaint was filed by a person before the court, he has got two options. As per the first course, it could take the complaint on file under Section 200 Cr.P.C. by examining the complainant and witnesses, if any and issue process. As per the second course, if the complaint disclosed cognizable offence, it could refer for investigation under Section 156(3) Cr.P.C. to find out the truth of the allegation.

42. After investigation, in the event of the filing of the negative report by the police, the court can issue notice to the complainant by giving opportunity to make his protest to the negative report. In the event of complainant convincing the court that negative report is wrong and he would be able to prove the offence by producing materials, the court can accept his statement and take the complaint on file or in the alternative, accept the negative report and reject the complaint.

43. In this case, admittedly, no complaint was filed. The petitioner chose to file only a petition under Section 156(3) Cr.P.C. As noted above, the said petition was allowed directing the preliminary enquiry. After receipt of the enquiry report, the Sessions Judge entertained the two protest petitions dated 12.3.2001 and 14.3.2001from the petitioner and rejected the same and accepted the preliminary enquiry report. Admittedly, there was no request made by the complainant before the court that he has got materials to prove the allegation and as such, he must be given opportunity to furnish materials before the court, so that on this basis further investigation can be ordered through any independent Agency. In this case, the complainant, though filed the complaint, never asked the Court to take cognizance under Section 190(1)(a) Cr.P.C. He cannot also ask for the same since the case involves offence under Prevention of Corruption Act which requires sanction for cognizance.

44. In such circumstances, I am unable to hold that the order impugned accepting the preliminary enquiry report is wrong, especially when there are no materials for further investigation and as such, this petition is not sustainable in law and on facts.

45. Though this Court is unable to interfere in the impugned order, this Court cannot but highlight some of the disturbing features noticed in this case relating to the conduct of the Principal Sessions Judge, Chennai. This could be summarised as follows.

46. Normally, the powers under Section 156(3) could be exercised by the court concerned only when the complaint under Section 200 Cr.P.C. is entertained. While entertaining the said complaint, if the court feels that the police investigation is necessary, then the investigation can be ordered under Section 156(3) Cr.P.C. For instance, if it is a case of forgery or a theft, then it would be necessary for the court to get the help of police for recovery of documents or for recovery the stolen articles. Of late, it is noticed that the persons with vested interest with some oblique motive approach the court to get the direction under Section 156(3) in order to make the police to arrest the other party and harass him. Even in the cases involving civil nature and in the cases where police do not entertain the complaint, the party concerned rushes to the criminal court and files a

complaint making some allegations constituting cognizable offences and wants an order under Section 156(3) Cr.P.C. The Courts also invariably without application of mind refer the matter for investigation under Section 156(3) Cr.P.C. Where the police would not normally entertain and register those cases, on the strength of Section 156(3) order, they would register and investigate those cases in such a manner to achieve the desired results as expected by the complainant party. It is sorry state of affairs that the Courts, now-a-days, shut their eyes while ordering investigation under Section 156(3) without looking into the allegations in the complaint whether it requires such investigation at all.

47. Admittedly, in this case, the petitioner had not approached with a complaint to take cognizance as he cannot do without the required sanction. He merely filed a petition for direction for investigation under Section 156(3) Cr.P.C. In this petition, there is allegation that Mr. Stalin amassed wealth and the same is required to be investigated. Along with the petition, photographs showing the house of Mu. Ka.Stalin were enclosed. In my view, the said allegation would not be sufficient to entertain the petition for ordering investigation under Section 156(3) Cr.P.C. In other words, mere allegation without any material would not suffice to hold that it is a matter for investigation by the police. If the court concerned feels that the said petition filed with oblique motive without any material, the same must have been rejected even at the threshold. But, the Principal Sessions Judge instead of rejecting the same on the very same day, i.e. on 12.2 .2001 posted for orders on 16.2.2001. In my view, the Principal Sessions Judge must have either rejected or ordered for enquiry on the very same day or he could have examined the complainant on oath and dismissed the complaint under Section 203 Cr.P.C. for want of materials or and want of sanction. Instead of doing that, the Principal Sessions Judge posted for orders on 16.2.2001 which created whole problem.

48. On 14.2.2001, Mr. Stalin came and appeared before the court and filed an affidavit requesting the court to order for an enquiry by the Vigilance Police in order to give an opportunity to him to get a clean certificate. Admittedly, Mr. Stalin was the Mayor on that day and his father was the Chief Minister under whom the entire State police including the Vigilance works. When the matter was posted on 16.2.2001 for orders, there is no necessity for Mr. Stalin to come and appear before the court on 14.2.2001 even without any summons. When it is settled law that the accused person has no say till the process is issued under Section 204 Cr.P.C., there is no reason as to why the Principal Sessions Judge entertained his presence in court and accepted his affidavit giving so many details including his request for direction for conducting enquiry through the police, even though the case was not posted on that day. The reading of the order passed by the Court below for directing preliminary enquiry on 16.2.2001 would show that the same seems to have been passed not on the petition filed by the petitioner, but mainly on the basis of affidavit filed by the respondent seeking for investigation against him. Therefore, the contention of the counsel for the petitioner that the order passed by the Principal Sessions Judge giving direction for enquiry was not for the purpose of finding out the truth of the allegation, but for the purpose of giving an opportunity to the respondent/accused to establish his

purity with the help of the police who work under his father, the Chief Minister, that too in the period just before the ensuing election, cannot be rejected in toto.

49. However, as noted above, since the said order was confirmed by this Court earlier, I do not want to observe anything about the legality of the order. But, I shall state that I am unable to approve the conduct of the Principal Sessions Judge who allowed the accused party to file his affidavit, especially when the matter was posted for orders to some other date, that too in the absence of the other side, the petitioner.

50. There is yet another aspect of the matter. In the impugned order dated 19.3.2001, the Principal Sessions Judge elaborately discussed the materials collected by the investigating agency to hold that the allegation of corruption made by the petitioner is not true. Strangely, the Principal Sessions Judge has referred to so many minute details and various documents which are not actually referred to in the preliminary enquiry report. How the Sessions Judge was able to get those particulars is not explained in the impugned order. Those documents are not available in the court records.

51. The Principal Sessions Judge has passed a detailed order covering about 31 pages giving the full particulars about the materials collected by the Vigilance in order to show that the investigation disclosed that there is no prima facie case made out as against Mr. Stalin. Though this sort of order need not be a lengthy one, the Principal Sessions Judge took unnecessary pain by making meticulous analysis of the enquiry report and other documents to accept the report stating that there is no prima facie case.

52. The reading of the various paragraphs of the impugned order would show that the Principal Sessions Judge had fully concentrated on finding out the reasons to give a "clean chit" to Mr. Stalin. As a matter of fact, the last para contains the observation by the Principal Sessions Judge which clearly demonstrates his intention of giving a conduct certificate in favour of Mr. Stalin. The observation is as follows:
"Mr.M.K. Stalin in the affidavit filed before this court has submitted that apart from praying for an enquiry and co-operating with the enquiry said "As the first citizen of the City of Chennai, elected to the office of the Mayor by a vast majority of votes, I will be and shall be the first person in upholding purity in public life". He has practically done it."
The above observation would constrain this Court to raise a question as to "why the Principal Sessions Judge took much pain to give a clean chit to Mr. Stalin?"

53. It is noticed that both the complaint filed by the petitioner and the affidavit by Mr. Stalin were filed before the court just some months prior to the election. It is further clear that both the parties wanted to get publicity and that they used the court to play their game treating the court as a playground. Unfortunately, the Principal Sessions Judge instead of being an Umpire has become the football which was hit by both the groups of the

game. The real victim is not the parties, but the court, the institution. Resultantly, the entire court's time had been wasted.

54. The powers of the court can be exercised in order to find out the truth. But, when the power of the court has been exercised to help one party in order to hold that he is pure, the said exercise is wholly unfair and the said act of the Judge is quite unbecoming.

55. The anxiety shown by the petitioner to keep the issue alive and make the investigation pending till the election is over and the anxiety of the respondent to get himself relieved or discharged from the said allegation by approaching the court is understandable. But, anxiety for the Judge to give a clean certificate to one of the parties within a short time is ununderstandable.

56. The Supreme Court in SUNIL KUMAR PAL v. PHOTA SHEIKH (A.I.R.19 84 S.C.1591), RAJENDER KUMAR JAIN v. STATE THROUGH SPL. POLICE ESTABLISHMENT (A.I.R.1980 S.C.1510), RANJIT THAKUR v. UNION OF INDIA (A.I.R.1987 S.C.2386) and DR. PREM CHAND v. MANAK LAL ADVOCATE (A. I.R.1957 S.C.425) would give clear guidelines as to how a Judge should behave while administering justice.

57. Justice must not only be done but also must appear to be done. No citizen should go away with the feeling that he could not get justice from the Court because the other side was socially, economically or politically powerful and could manipulate the legal process. If such a feeling is created in the mind of a common man, who approaches the Court for justice, he would certainly feel that the Judge, who could not render justice, is biased.

58. The proper approach for the Judge is not to look at his own mind and ask himself, honestly, "am I biased?", but to look at the mind of the party before him.

59. Criminal justice is not a plaything and Criminal Court is not a playground for politicking. If political fortunes are allowed to be reflected in the process of the Court, very soon the credibility of the rule of law will be lost. It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process.

60. In the very first Tirukural of the Chapter 55, on caption "ON JUST RULE", Tiruvalluvar emphasises the Kingly duty of taking cognizance of the activities of all wrong-doers, and delivering even-handed justice, with fairness and impartiality in all cases. The following is the couplet:

@Xh;e;Jfz; nzhlhJ ,iw[g[hpe;J ahh;khl;Lk;
njh;e;Jbra; t`nj Kiw.@

The translation is, "a fair-minded Judge takes cognizance of all offences and does not lean towards anyone in rendering justice. Where necessary, he consults with the men of law; that is the way to administer justice."

61. In the light of the above principles laid down by the Apex Court and also in the light of the guideline given by Tiruvalluvar for the administration of justice without bias, it shall be stated that the conduct of the learned Principal Sessions Judge, Chennai, in giving a "clean certificate" to one of the parties, that too, on the eve of election, would definitely

create an impression not only in the mind of the common man including the petitioner, but also in the mind of this Court that the Principal Sessions Judge would not get a clean certificate as "unbiased".

62. "A Judge must be identified with justice and justice alone and not with any party to the proceedings, however high he may be". There only JUSTICE wins.

63. With the above observations, the revision is dismissed.

22-07-2002
Index: Yes
I.Net: Yes
mam
To
1) The Principal Sessions Judge, Chennai
2)The Public Prosecutor, High Court, Madras.

M. KARPAGAVINAYAGAM, J.
mam
Order
in
Crl.R.C.No.412 of 2001

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